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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,183

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J. Dirk Vermeulen

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EXAMINER

MALLARI, PATRICIA C

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

05/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/709,183

**Applicant(s)**

VERMEULEN ET AL.

**Examiner**

PATRICIA C. MALLARI

**Art Unit**

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24, 28-31, 35 and 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24, 28-31, 35 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The finality of the previous Office action has been withdrawn. The indicated allowability of claim 27, the subject matter of which is now incorporated into claim 24, has regretfully been withdrawn. This is a non-final Office action.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26, 28-31, 35, and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,524,242 to Subramanyan et al. in view of US Patent No. 5,433,214 to Brehm or as being unpatentable over Subramanyan in view of Brehm and US Patent No. 4,168, 206 to Boyer. Regarding claims 24 and 35, Subramanyan teaches a method of employing a flowable indicator for characterizing skin condition. The method comprises applying a flowable indicator to a desired area of skin. The indicator includes at least one dye which changes when in solution with at least one substance secreted by human skin and wherein a visual change in the dye is proportional to the amount of oil present in solution and is activated in response to a reaction of the indicator with the at least one substance found on the skin after a period of time to effect a visually discernable change of the indicator (see entire document, especially col. 2, lines 8-50; col. 6, lines 1-24 of Subramanyan). Subramanyan lacks

the visual change being a change in color or color intensity and further lacks a reference relating a plurality of possible changes to a plurality of skin conditions.

Brehm teaches a method of characterizing skin condition wherein an indicator is applied to a desired area of skin and is reactive to at least one substance secreted by the skin so that the indicator visually changes in color in response to reacting with the at least one substance. A degree of visual change in color of the indicator is representative of the amount of oil (fat) in contact with the indicator (see entire document, especially col. 3, line 32-col. 4, line 38 of Brehm). The method further comprises waiting for the indicator to activate and determining if the indicator is activated (see entire document, especially col. 3, line 66-col. 4, line 11 of Brehm), wherein examining the indicator at any point is a step of determining if the indicator is activated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to use a color change, as described by Brehm, in place of the visual change of Subramanyan, as it would merely be the substitution of one known visual change for another. Further, such a substitution would simplify the method and the reduce the cost by replacing the need for a spectrophotometer with a scale or reference, wherein the visually discernable change of the indicator is compared to the scale or reference to characterize the skin condition(see entire document, especially fig. 4; col. 4, lines 31-38 of Brehm). Subramanyan, as modified, lacks waiting further for the flowable indicator to activate if the user has determined that the flowable indicator is not yet activated.

However, one of ordinary skill in the art would recognize that periodic or multiple checks are sometimes needed to ensure that a substance has activated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to make multiple checks on the flowable indicator to ensure that the indicator activated. In the alternative or in addition US Patent No. 4,168,206 to Boyer discloses periodically checking a system for color changes (see entire document, especially col. 3, lines 11-19 of Boyer). Therefore, it would have been obvious to one of ordinary skill in the art to periodically check the system of Subramanyan, as modified, for color changes in order to ensure that a substance has activated.

Regarding claims 28, 29, 31, 37, 38, and 40, appropriate cosmetics are determined for use with the characterized skin condition (see entire document, especially col. 4, lines 35-39 of Brehm).

Regarding claims 30 and 39, a visual reference for comparison of the visually discernable change to a standardized reference point is provided (see entire document, especially fig. 4; col. 4, lines 31-38 of Brehm).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICIA C. MALLARI whose telephone number is (571)272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/  
Primary Examiner, Art Unit 3735